

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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WESTPORT INSURANCE CORPORATION,

Plaintiff,

Case No.: 07 Civ. 6726 (SHS) (RLE)

-against-

PATRICIA HENNESSEY, ESQ., and COHEN,
HENNESSEY, BIENSTOCK & RABIN, P.C.
f/k/a COHEN, HENNESSEY, BIENSTOCK, P.C.,

Defendants.

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REPLY TO COUNTERCLAIMS

Plaintiff/Counterclaim Defendant Westport Insurance Corporation, by their attorneys, Wilson, Elser, Moskowitz, Edelman & Dicker, LLP, hereby responds upon information and belief to the allegations and counterclaims contained in the defendants' Answer and Counterclaims, dated August 24, 2007, as follows:

COUNTERCLAIMS

FIRST: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "1" of defendants' counterclaim, and in addition, states that the contents of the documents referred to therein speak for themselves.

SECOND: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "2" of defendants' counterclaim.

THIRD: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "3" of defendants' counterclaim, and in addition, states that the contents of the documents referred to therein speak for themselves.

FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "4" of defendants' counterclaim, and in addition, states that the contents of the documents referred to therein speak for themselves.

FIFTH: Admits that on or about January 29, 2007, Plaintiff received Ms. Asher's verified complaint against Defendants.

SIXTH: Denies the truth of each and every of the allegations contained in paragraph "6" of defendants' counterclaim, and in addition, states that the contents of the documents referred to therein speak for themselves and leaves all questions of law to the Court for judicial determination.

SEVENTH: Denies the truth of each and every of the allegations contained in paragraph "7" of defendants' counterclaim, and in addition, states that the contents of the documents referred to therein speak for themselves and leaves all questions of law to the Court for judicial determination.

EIGHTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "8" of defendants' counterclaim, except admits that Plaintiff assigned Defendants' defense of Ms. Asher's verified complaint to the law firm of Rivkin Radler LLP.

NINTH: Denies the truth of each and every allegation contained in paragraph "9" of defendants' counterclaim.

TENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "10" of defendants' counterclaim, and in addition, states that the contents of the documents referred to therein speak for themselves.

ELEVENTH: Denies the truth of each and every allegation contained in paragraph “11” of defendants’ counterclaim.

FIRST COUNTERCLAIM

TWELFTH: Plaintiff/counterclaim defendant repeats, reiterates and realleges each and every response as previously set forth in paragraphs numbered “FIRST” through “TWELFTH” as if the same were repeated verbatim at length herein.

THIRTEENTH: Denies the truth of each and every allegation contained in paragraph “13” of defendants’ counterclaim.

FOURTEENTH: Denies the truth of each and every allegation contained in paragraph “14” of defendants’ counterclaim.

FIFTEENTH: Denies the truth of each and every allegation contained in paragraph “15” of defendants’ counterclaim.

SIXTEENTH: Admits that by this action, Plaintiff alleges that, pursuant to the Westport Insurance Policy, it has no duty to defend Ms. Asher’s verified complaint on behalf of Defendants.

SEVENTEENTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “17” of defendants’ counterclaim, and in addition, states that the contents of the documents referred to therein speak for themselves.

EIGHTEENTH: Denies the truth of each and every allegation contained in paragraph “18” of defendants’ counterclaim.

NINETEENTH: Denies the truth of each and every allegation contained in paragraph “19” of defendants’ counterclaim.

TWENTIETH: Denies the truth of each and every allegation contained in paragraph “20” of defendants’ counterclaim.

TWENTY-FIRST: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “21” of defendants’ counterclaim.

SECOND COUNTERCLAIM

TWENTY-SECOND: Plaintiff/counterclaim defendant repeats, reiterates and realleges each and every response as previously set forth in paragraphs numbered “FIRST” through “TWENTY-SECOND” as if the same were repeated verbatim at length herein.

TWENTY-THIRD: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “23” of defendants’ counterclaim, and in addition, respectfully refers all questions of law to the Court for judicial determination.

TWENTY-FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “24” of defendants’ counterclaim, and in addition, respectfully refers all questions of law to the Court for judicial determination.

TWENTY-FIFTH: Denies the truth of each and every allegation contained in paragraph “25” of defendants’ counterclaim.

TWENTY-SIXTH: Denies the truth of each and every allegation contained in paragraph “26” of defendants’ counterclaim.

TWENTY-SEVENTH: Denies the truth of each and every allegation contained in paragraph “27” of defendants’ counterclaim, except admits that Plaintiff has disclaimed its duty to defend Ms. Asher’s verified complaint on behalf of Defendants.

TWENTY-EIGHTH: Denies the truth of each and every allegation contained in paragraph “28” of defendants’ counterclaim.

TWENTY-NINTH: Denies the truth of each and every allegation contained in paragraph “29” of defendants’ counterclaim.

THIRD COUNTERCLAIM

THIRTIETH: Plaintiff/counterclaim defendant repeats, reiterates and realleges each and every response as previously set forth in paragraphs numbered “FIRST” through “THIRTIETH” with the same force and effect as if fully set forth at length herein.

THIRTY-FIRST: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “31” of defendants’ counterclaim, and in addition, respectfully refers all questions of law to the Court for judicial determination.

THIRTY-SECOND: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “32” of defendants’ counterclaim, and in addition, respectfully refers all questions of law to the Court for judicial determination.

THIRTY-THIRD: Denies the truth of each and every allegation contained in paragraph “33” of defendants’ counterclaim.

THIRTY-FOURTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “34” of defendants’ counterclaim, except admits that it issued a disclaimer.

THIRTY-FIFTH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph “35” of defendants’ counterclaim, and in addition, states that the contents of the documents referred to therein speak for themselves.

THIRTY-SIXTH: Denies the truth of each and every allegation contained in paragraph "36" of defendants' counterclaim.

THIRTY-SEVENTH: Denies the truth of each and every allegation contained in paragraph "37" of defendants' counterclaim.

THIRTY-EIGHTH: Denies the truth of each and every allegation contained in paragraph "38" of defendants' counterclaim.

FOURTH COUNTERCLAIM

THIRTY-NINTH: Defendant repeats, reiterates and realleges each and every response as previously set forth in paragraphs numbered "FIRST" through "THIRTY-NINTH" as if the same were repeated verbatim at length herein.

FOURTIETH: Denies knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph "40" of defendants' counterclaim.

FORTY-FIRST: Denies the truth of each and every allegation contained in paragraph "41" of defendants' counterclaim.

AFFIRMATIVE DEFENSES

FORTY-SECOND: Defendants counterclaims fail to state a claim upon which relief can be granted.

FORTY-THIRD: Defendants have waived their right to obtain the relief they seek.

FORTY-FOURTH: Defendants should be estopped from obtaining the relief it seeks.

FORTY-FIFTH: Defendants are not entitled to the relief they seek due to the doctrine of unclean hands.

FORTY-SIXTH: Defendants are not entitled to the relief they seek due to the doctrine of laches.

WHEREFORE, Plaintiff/Counterclaim Defendant, Westport Insurance Corporation, demands judgment dismissing defendants' counterclaims herein, together with costs and disbursements of this action, and such other and further relief as this Court deems just and proper.

Dated: New York, New York
September 20, 2007

Yours, etc.

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER LLP

By: 
Mark K. Anesh (MA8303)
*Attorneys for Plaintiff/Counterclaim
Defendant*
WESTPORT INSURANCE
CORPORATION
150 East 42nd Street
New York, New York 10017-5639
(212) 490-3000
File No.: 05302.00249